

## CHAPTER 80-1-2

### Agency Relationships of Financial Institutions; Bank Service Contracts

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#### 80-1-2-.01 General Provisions and Definitions.

(1) A state financial institution may contract with another financial institution to provide certain services in a principal-agent relationship, provided both parties comply with the rules of the Department.

(2) Agency relationships shall comport with safety and soundness principles to protect the financial integrity of each financial institution and the accounts of its customers.

(3) Definitions:

(a) The term "agency relationship" shall be as defined in Code Section 7-1-4(1.5).

(b) An "affiliated bank" or "affiliate" shall be as defined in Code Section 7-1-4(1).

(c) "Bank Service Contract" shall mean a contract executed by a bank and a third party, to provide direct or indirect bank services to the bank.

(d) "Department" shall be the Department of Banking and Finance of the State of Georgia.

(e) "Direct Bank Services" shall include traditional banking functions such as taking deposits, paying checks and closing loans.

(f) "Financial institution" shall, for the purposes of this chapter, be a state bank or a national bank, a credit union, a trust company, a building and loan or a savings and loan association or savings bank, wherever located, and may be collectively referred to in this chapter as "bank."

(g) "Georgia Bank" shall be a financial institution organized under the laws of this state, owned by a holding company registered with the Department as a holding company, or, organized under federal law with its home state in Georgia.

(h) "Indirect Bank Services" are those back office, support or enhancement type operations potentially provided by third parties, including but not limited to check and deposit sorting and posting; electronic and video systems for recording bank functions; computation and posting of interest and other credits and charges; preparation and marking of checks, statements, notices and similar items, bill payment and other services requested by customers which are provided by the bank through a third party; loan servicing; or other clerical, bookkeeping, accounting, statistical, customer support or similar functions which may be performed by a bank, whether performed on site or elsewhere, and regardless of the method of delivery.

(i) "Third party" shall mean any provider of services to a bank.

(j) "Unaffiliated Bank" shall mean any Georgia bank which is not an affiliate.

(4) This chapter is not intended to apply to non-banking related operational or administrative functions which do not tend to impact the safety and soundness of the bank or the accessibility to the Department of its records.

Authority O.C.G.A. §7-1-4(1.5); O.C.G.A. §7-1-61; §7-1-261.

### **80-1-2-.02 Direct Bank Services Subject to Agency Regulation.**

(1) A Georgia bank may, upon compliance with this chapter and applicable law, agree by contract to act as principal or agent with an affiliated bank to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform such other direct bank services as may receive the prior approval of the Department.

(2) Notwithstanding any other provision of law in this state, if a Georgia bank complies with Code Section 7-1-261 and this chapter, the agent financial institution shall not be considered a branch office of the principal, regardless of location. The following conditions must continuously exist throughout the term of the agency relationship:

(a) The provision of services is conducted as an accommodation and does not constitute a significant portion of the business of the agent financial institution;

(b) The Department concludes that each participating financial institution has separate and independent management and separate and independent boards of directors;

(c) The services are provided by employees of the agent financial institution and not by employees of the financial institution at which the customer maintains a deposit account; and

(d) Decisions regarding the operations of the agent facilities, such as staffing hours, locations and fees will generally be driven by the business interests of the agent in serving its own customers and not those of the principal.

(e) The agent bank must at all times provide sufficient information and explanation in such forms as customer transaction receipts, signage and other similar items to customers utilizing agency services to clearly distinguish which bank their account is held with and which bank is providing the agency services.

Authority O.C.G.A. §7-1-4(1.5); O.C.G.A. §7-1-61; §7-1-261.

### **80-1-2-.03 Application to Conduct Agency Relationship.**

(1) A Georgia bank wishing to act as principal or agent for the provision of direct bank services shall apply by letter to the Department for permission, and shall pay any applicable fee. The application shall include:

(a) Notice of intention to engage in an agency relationship and the desired effective date;

(b) A description of the services proposed to be performed and at what locations;

(c) A copy of the agreement; and

(d) Relationship of principal to agent and proof of affiliation if applicable.

(2) The agreement or contract must provide in clear and conspicuous form:

(a) All of the fees to be charged for services rendered;

- (b) A full description of the services;
- (c) The actual physical or technological operations contemplated in reasonable detail including provisions for confidentiality and security;
- (d) A procedure for resolution of customer problems with lost items or inaccuracies;
- (e) Provisions for responsibility for risk of loss of items in transit or in process;
- (f) A procedure for compliance with depository, privacy, funds availability and other applicable law by specific reference in reasonable detail;
- (g) Methods for accounting and record keeping of items received and disbursed by agent bank; and
- (h) Procedures for disclosure to customers of their rights and responsibilities under this arrangement.

Authority O.C.G.A. §7-1-4(1.5); O.C.G.A. §7-1-61; §7-1-261.

#### **80-1-2-.04 Review by Department of Agency Agreement.**

(1) The application to the Department must be provided to it not less than thirty (30) days prior to the desired effective date of the agreement and commencement of the agency relationship.

(2) The Department shall decide whether to approve the offering of such services in the form proposed within thirty (30) days after receipt of the complete application. If the Department requests further information or amendment, the time limit shall be extended for thirty (30) days after receipt of the additional information.

(3) The decision as to whether to approve the services proposed or not, shall be based upon a consideration of applicable federal and state law and the safety and soundness of the institutions involved.

(4) A financial institution may not as agent, or as principal have its agent, conduct an activity that it would be prohibited from conducting as principal under applicable state or federal law.

(5) The Department shall employ its statutory powers to order a state institution to cease acting as principal or agent under an agency agreement if it finds that the activities are inconsistent with safe and sound banking practices.

Authority O.C.G.A. § 7-1-4(1.5); O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261.

#### **80-1-2-.05 Bank and Credit Union Service Contracts: Requirements of Providers.**

(1) Each entity that provides indirect or direct bank or financial services to a state financial institution subjects that person to examination and regulation by the department as if the person were a state financial institution, as authorized by Code Section 7-1-72.

(2) The powers of examination and regulation may be used in the discretion of the department whenever the safety and soundness of the financial institution could be affected, or whenever the objectives of Chapter 1 of Title 7 are questioned.

**80-1-2-.06 Contracts for Direct or Indirect Bank Services.**

(1) A state chartered bank that wishes to contract with a third party to provide bank services shall within 30 days of execution of such a contract, notify the department in writing or provide to the department a copy of the notification to its federal regulator. Compliant notification and recordkeeping shall constitute approval from the department to contract with a third party. Such third party must comply with any state or federal licensing requirements if applicable.

(2) A state chartered bank contracting with a third party to provide bank services must maintain the following information on file at the bank and shall not execute a contract with a third party unless this information has been obtained.

(a) A copy of the contract under which the services are provided;

(b) A schedule of fees to be charged for each type of service to be performed;

(c) Written assurance from the third party service provider that:

1. The records of the bank for which the services are to be performed will be subject to examination and regulation by the department as if the records were maintained by the bank on its own premises,

2. The records of the bank in the service provider's possession shall be available to examiners promptly upon receipt of notice; and

3. The department shall have the authority to periodically review the internal routine and controls of the servicers to ascertain that the operations are being conducted in a sound manner in keeping with generally accepted banking procedures and requirements;

(d) A listing of all reports, and printouts which the service provider is offering the bank and the time required, after receipt of notice of examination, to provide those reports or information in readable form to the examiners;

(e) Evidence of financial stability, to include a copy of the service provider's most recent audit and financial statement, both of which should be aged no more than 18 months; and

(f) Biographical information on key officers may be desirable where a provider is not a publicly traded company.

(3) A state chartered bank contracting with a third party provider must employ good faith efforts to monitor the financial condition of the service provider and must notify the department immediately when it discovers or suspects that the servicer has experienced a net operating loss or is insolvent.

(4) For the purposes of this regulation, "net operating loss" shall mean that all operating income is less than the total of:

(a) All operating expenses, and

(b) Other expenses, losses on sale of assets or investments, and any provisions established for losses on investments, loans or other assets.

Authority Ga. L. 1974, pp. 733, 739; O.C.G.A. §7-1-61.

**80-1-2-.07 Repealed. Reserved.**

Authority Ga. L. 1974, pp. 733, 739; O.C.G.A. §7-1-61.

**80-1-2-.08 Severability.**

If any provision of this chapter or the application of it to any bank, third party or circumstance is held invalid, such invalidity shall not affect the provisions or applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of this rule are declared to be severable.

Authority O.C.G.A. § 7-1-61.

**80-1-2-.09 Debt Cancellation Contracts and Debt Suspension Agreements.**

(1) State chartered financial institutions may offer Debt Cancellation Contracts and Debt Suspension Agreements to customers, subject to this rule and policies and procedures of the department. Policies of the department include requirements for disclosures and certain prohibited practices. Financial institutions are expected to comply with all these requirements. Such products will not be considered insurance products in this state when offered by financial institutions.

(2) Definitions and Explanation:

(a) A “Debt Cancellation Contract” (DCC) is a contractual agreement modifying loan terms that is linked to a financial institution’s extension of credit, under which the financial institution agrees to cancel all or part of a customer’s obligation to repay an extension of credit from that financial institution upon the occurrence of a specified event.

(b) A “Debt Suspension Agreement” (DSA) is a contractual agreement that modifies loan terms and that is linked to an extension of credit, wherein the financial institution agrees to suspend all or part of a customer’s obligation to repay an extension of credit upon the occurrence of some specified event.

(c) Typically these products are tied to the life, injury or disability of the borrower, although some products are based on the occurrence of some other specified event, such as termination of employment.

(d) Fees are assessed to the borrower for the ability to cancel or suspend loan payments on the loan, in accordance with the terms of the agreement.

(e) To “underwrite” in the context of this rule means to directly provide for any losses resulting from the operation of the product.

(3) State chartered financial institutions desiring to offer DCC or DSA products where the financial institution is not underwriting the product shall provide a letter form notification to the department. The financial institution must keep on file the following information, which must be obtained before execution of a contract:

- (a) A listing of the types of contracts offered and the underwriting standards for each product;
- (b) A copy of the written policies and procedures developed regarding administration of debt cancellation or debt suspension products and their compliance with department policies;
- (c) Identification of any vendor or third party service provider used in conjunction with the product offerings, including a list of the products and services being provided (see also Rule 80-1-2-.06 for banks and Rule 80-2-7-.01 for credit unions for contracting with third parties);
- (d) A copy of the financial institution's plan demonstrating the ability to administer claims;
- (e) An analysis of the financial institution's risk evaluation and mitigation procedures, including any plans to obtain insurance coverage to fully or partially indemnify itself for losses resulting from the operation of the DCC or DSA product; and
- (f) An analysis of the expected impact on financial institution staffing.

(4) If a financial institution intends to underwrite any part of the DCC or DSA, the following information must also be submitted to the department in the form of a letter application. No underwriting will be permitted until such approval is granted.

- (a) Analysis of management expertise, based on education and experience, in the areas of product design, underwriting, actuarial analysis, claims processing and risk reserving and accounting practices to support the ability to provide these functions in-house.

- (b) An explanation of the risk management techniques the financial institution will undertake, including product design criteria, underwriting procedures, limitations and conditions on DCC or DSA products, and other risk mitigation procedures in order to limit risk exposure to the financial institution.

- (c) A well-documented analysis of risk of the products being proposed, including the risks posed by catastrophic events that could result in unusually high claims upon the financial institution.

- (d) An outline of the proposed practices for properly reserving for risks related to these products based on industry practices and Generally Accepted Accounting Principles.

- (e) An analysis of the financial institution to support that the financial institution has the proper financial position, cash flow performance and capital position to sustain continued operations in the event of an unusually high claims event.

(5) State chartered financial institutions desiring to offer DCC or DSA products where third party service providers will underwrite the products or will administer any part of the program shall provide the letter form notification described in this rule. In addition to any requirements of Rule Chapter 80-1-2 and Rule Chapter 80-2-7 governing service providers, the following information shall also be obtained by the financial institution before any contract is executed, and such information will be kept on file at the financial institution:

- (a) A description of the experience of the third party service provider in offering such DCC or DSA products;

- (b) An analysis of the financial stability of the third party service provider, including but not limited to: operating or cash flow statements, analysis of capital and reserves and the use of external company ratings

performed by a nationally recognized rating service;

(c) In lieu of (a) and (b) of this paragraph, the financial institution may provide proof of the third party's appropriate licensure with the state of Georgia Department of Insurance.

(d) A copy of the standard form contract to be utilized. The contract must contain the third party service provider's assurance that:

1. It will make its books and records available for examination by the department; and

2. The department shall have the authority to periodically review the internal routine and controls of the service provider to ascertain that the operations are being conducted in a sound manner in keeping with industry practices and Generally Accepted Accounting Principles.

(e) A schedule of fees to be charged for each product or service performed; and

(f) A listing of reports, printouts, schedules or program that will be provided by the third party service provider to the financial institution to permit management, auditors, examiners and other interested parties to monitor the services provided.

Authority Ga. L. §7-1-61.